

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

DEVIN KIENOW,

Petitioner/Plaintiff,

v.

YAKAMA NATION TRIBAL
COURT, and the HONORABLE
MARYROSE GONZALES, Associate
Justice,

Respondents/Defendants.

NO: 1:18-CV-3194-TOR

ORDER DISMISSING CASE AS
MOOT

BEFORE THE COURT is the Order to Show Cause as to why this case should not be dismissed as moot. ECF No. 60. This matter was heard without oral argument. Having reviewed the file and the records contained therein, the Court is fully informed.

DISCUSSION

On October 9, 2018, Plaintiff filed a complaint styled as a Petition for Writ of Habeas Corpus and or Petition for Declaratory Relief. ECF No. 1. Plaintiff

1 invoked 25 U.S.C. § 1303 as the jurisdictional basis for the writ of habeas corpus
2 and invoked federal question jurisdiction pursuant to 28 U.S.C. § 1331 as the basis
3 for declaratory relief. *Id.*

4 The material facts proffered by Plaintiff are that he and his wife were
5 seeking a divorce. Mr. Kienow filed in Yakima County Superior Court and Mrs.
6 Kienow filed in the Yakama Nation Tribal Court. Defendant Gonzales observes
7 that “the tribal court dissolution action was filed *before* the superior court case”
8 and that “an attorney entered an appearance on [Plaintiff’s] behalf well before any
9 competing dissolution petition was filed in the state court.” ECF No. 25 at 7. The
10 Yakima County Superior Court entered an order “staying all proceedings pending
11 resolution of the tribal court matter.” *Id.*

12 After a series of motions and amendments to the Petition / Complaint, ECF
13 Nos. 12, 14, this Court stayed the case pending exhaustion of remedies in Yakama
14 Tribal Court. ECF No. 34. At the direction of the Court, Plaintiff provided status
15 reports every 3-months.

16 The most recent status reports, ECF Nos. 57, 59, show that the underlying
17 matter has proceeded to trial in the Washington State Courts and is currently
18 pending before Division III of the Washington State Court of Appeals. The
19 purpose of Plaintiff filing this lawsuit was to prohibit the Yakama Tribal Court
20 from exerting jurisdiction over the dissolution of marriage and attendant issues.

1 Because the dissolution of marriage has progressed in state court, this
2 federal lawsuit seeking to prevent the Yakama Nation Tribal Court from exerting
3 jurisdiction over the dissolution of marriage and attendant issues is moot.

4 Plaintiff contends that this action must proceed because “there is nothing
5 preventing Yakama Tribe from attempting to exert its jurisdictional claim over the
6 dissolution and attendant issues, to include over my non-tribal children.” ECF No.
7 62 at 2-3. Plaintiff also cites to testimony from his ex-wife saying that “she
8 believes she could return to tribal court in the future.” *Id.* at 3.

9 However, a mere statement of hypothetical future possibilities does not
10 constitute a case and controversy warranting this Court’s exercise of jurisdiction.


11 **ACCORDINGLY, IT IS HEREBY ORDERED:**

- 12 1. The Stay in this case, ECF No. 34, is **LIFTED**.
13 2. This action is **DISMISSED** as moot.
14 3. Plaintiff’s Motion to Obtain Electronic Case Filing Authorization, ECF
15 No. 63, is **DENIED** as moot.

16 The District Court Executive is hereby directed to enter this Order, enter
17 Judgment accordingly, furnish copies to the parties, and **CLOSE** the file.

18 DATED November 19, 2021.




THOMAS O. RICE
United States District Judge